IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 879 of 1996

with

CRIMINAL MISC.APPLICATION No 124 of 1997
(For enhancement)

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODBHAI MOHANBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 879 of 1996
MR BS SUPEHIA for appellant No. 1
Mr.M.A.Bukhari, learned Addl.P.P.
for Respondent No. 1

2. Criminal Misc.Application No. 124 of 1997
Mr.M.A.Bukhari, learned Addl. P.P.
for applicant No. 1
MR BS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges the judgment and order dated 30.9.96 passed by the learned Sessions Judge, Valsad at Navsari in Sessions Case No.67/96 convicting the appellant Vinodbhai Mohanlal Parmar for the offence under Section 304 Part I of the I.P.C. and sentencing him to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/-- in default to undergo simple imprisonment for 6 months.

2. The prosecution version was that the complainant Niruben Mohanbhai was residing in Chapaldhara Patel Falia in village Vansada. In the other part of the building her husband's younger brother Babubhai resided with his wife. Her brother's sister Savita, who was remarried to the accused Vinod, was residing in the nearby rented house with her children. Her son Rakesh was born to her from her previous husband. On 27.1.94 in the evening at about 8 '0' Clock when the complainant and her husband Mohanbhai were about to retire to bed after having their meals, Rakesh came there crying and complaining that he was beaten by his father Vinod. He was, therefore, consoled and given food. Thereafter, Savita came there to take away Rakesh and told Mohan and Babu that her husband was quarrelling with her because of them. After Savita went back her shouts were heard and thereupon her brother Babu told Mohan that they should go to her house. Mohan, however, refused to accompany him. Babu then took a stick and went to the house of his sister Savita. According to the prosecution case, Vinod gave Babu seven knife blows as a result of which he fell down in the house of Vinod. Thereafter, Vinod came out of his house and, when asked, he had stated that he had assaulted Babu. Niruben and Vanita reached there. Babu had asked for some water, which was given to him. People gathered and took Babu to the Hospital, where he was declared dead.

3. The trial court on the basis of the oral and documentary evidence on record, came to a finding that the prosecution had established that the accused Vinod had intentionally caused the death of his brother-in-law

Babu by giving him knife blows. It was, however, held that since Babu was armed with a stick, it appeared that the accused had exceeded his right of private defence. The accused was, therefore, convicted for the offence under Section 304 Part I of the I.P.C. and imposed the above sentence.

4. When the learned single Judge admitted the Appeal on 24.12.96 a notice of enhancement was ordered to be issued and bail was refused. Because of the enhancement notice the matter has been placed before the Division Bench. We are told that the appellant - accused has already undergone the sentence.

5. The learned counsel for the appellant contended before us that the prosecution has not been able to establish the guilt of the accused beyond reasonable doubt and there was inconsistency between the deposition of the prosecution witnesses, who had reached the place of the incident soon after it occurred. It was contended that there was no eye witness to this incident, and the circumstantial evidence was not strong enough to hold the accused guilty of the offence. It was also argued that in any event the possibility of there being sudden fight between these two relatives cannot be ruled out in view of some quarrel over child Rakesh and, therefore, the case of the accused would fall in Exception 4 to Section 300 of the I.P.C. and consequently conviction can be only under Section 304 Part I of the I.P.C. and there was no valid reason to enhance the conviction and sentence to one under Section 302 of the I.P.C. It was also contended by the learned counsel that the prosecution had not examined any independent witness though the incident had occurred in a residential locality.

6. The learned Addl. P.P., on the other hand, contended that having regard to the several knife blows given to Babu and to the fact that one of the knife blows was on the vital part of the body, this was a fit case for convicting the accused for the offence under Section 302 of the I.P.C. He submitted that the finding of the trial court that the accused had exceeded his right of private defence was without any basis because no such case of private defence was put forward on behalf of the accused in the deposition of any of the witnesses nor was such defence taken in his statement under Section 313 of the Cr.P.C.

7. The complainant Niruben in her deposition Exh.6 has stated that accused was her husband's sister's

husband and deceased Babubhai was her husband's younger brother. Her husband's sister Savita also known as Savli was residing in a nearby house with her husband and two children; one of whom was Rakesh. On the day of the incident, in the evening, Rakesh had come to her house at about 8.30 P.M. and had complained that he was being beaten by his father i.e. the accused. She asked Rakesh to sleep in her house. Thereafter, Savita had come and taken him away. After some time shouts were heard from the house of the accused. Therefore, her brother-in-law Babubhai went there and told the accused as to why was he threatening Rakesh. Since Savita had started shouting, she had also gone there. When she reached the house of the accused, she saw her brother-in-law Babubhai lying there profusely bleeding and at that time, the accused Vinod came out of the house and had run away. She had seen that Babubhai was having 4 to 5 injuries on his person. Babubhai asked for water and she gave it to him. Thereafter, when Babubhai was being taken to Vansada hospital he died on the way. She had lodged the F.I.R. Exh.21. In her cross-examination, a suggestion was made to her that Babubhai had given 2 - 3 stick blows to Vinod but she stated that she was not aware of it. She had denied the suggestion that she and her husband were against the accused Vinod because he was a Harijan or because they had not approved Savita's marriage with him.

8. The prosecution witness Vanita, who is the widow of the deceased Babubhai, in her deposition Exh.10 has stated that the accused was the husband of the sister of her husband and was residing in the same Falia. On the day of the incident, her sister-in-law Savita had come to her house and quarreled with them because her son had come there. Thereafter, she had gone away. She then heard Savita shouting "Are you going to kill me?". On hearing such shout, her husband Babubhai went to Vinod's house. She also followed him. Her husband was assaulted on his chest, abdomen and hand and was lying on the floor profusely bleeding. He told her to tie him a bandage and take him to the Hospital. He also told her that he was assaulted by Vinod. Thereafter, he was taken to the Hospital. He died during the same night. She has stated that her husband was lying in Vinod's house. When she was going to Vinod's house, she saw him. Savita was following Vinod. They were going from their house towards the village. In her cross-examination she has admitted that her husband Babubhai had gone to the house of Vinod with a stick. She has denied the suggestion that Babubhai was a habitual drunkard, but has admitted that he was occasionally drinking. She has denied the suggestion that Babubhai told her that he had given a few

stick blows to Vinod.

9. Prosecution witness Savita, wife of the accused, in her deposition at Exh.12, has stated that she has three children, of whom Rakesh was born to her by her previous husband. She and her brothers Mohanbhai and Babubhai were residing in the same Falia. On the day of the incident, she had gone to deliver meals to her uncle's son, who was sick and had returned to her house at 8.30 P.M. At that time, she saw her husband running out of their house. She entered the house and saw that her husband was running away after giving knife blows to her brother Babubhai, who was lying in the house injured. Her sister-in-law Niruben and Babubhai's wife Vanita had come there. Thereafter, the nearby residents had come. She has stated that Babubhai died on way to the Hospital. On the day of the incident, she, her husband and children were the only persons residing in their house. She has denied the suggestion made in the cross-examination that her brothers and their wives were quarrelling with Vinod because they had not approved of her marrying him. She has stated that there was a stick lying near the place where Babubhai had fallen. She admitted in the cross-examination that Babubhai was in the habit of drinking.

10. Prosecution witness Somabhai in his deposition at Exh.15 has stated that on the day of the incident in the evening while he was sitting after having his meals he heard shouts. He, therefore, went to the house of the accused and saw that Babubhai had fallen down with seven injuries, in the house of Vinod. According to him Vinod was running away. This witness, Saiyad and Salim had chased Vinod and had caught him.

11. The version of the aforesaid witnesses clearly establishes that in the evening of the day of the incident, Rakesh, son of Savita by her previous husband, was being beaten by Vinod and had gone to the house of Niruben and, therefore, Savita came there to take him back complaining that the accused was getting angry on her because of their conduct. After she went back, her shout was heard "Are you going to kill me". On hearing this her brother Babubhai went there with a stick. He entered the house of the accused. When other witnesses heard the shouts and reached there they saw the accused running away and Babubhai lying in his house with multiple injuries by knife. The evidence of these witnesses is sufficient to establish that it was the accused alone who had given the knife blows to Babubhai. There was no one else residing in that house except

Savita and her husband Vinod and their children. The incident had suddenly occurred and the aforesaid witnesses were natural witnesses, who on hearing shouts went to the house of the accused Vinod and saw him running away after inflicting knife blows to Babubhai, who was found lying profusely bleeding in the house of Vinod. The version of these witnesses is corroborated by the medical evidence. Dr.Thakorebhai Mehta in his deposition at Exh.16 has narrated the seven injuries, which were noticed by him on the body of Babubhai. He had also described the internal injuries and has stated that Injury No.7 was sufficient in the ordinary course of nature to cause death. In his cross-examination he admitted that except 6th and 7th injuries, all other injuries were simple injuries. He has proved the post-mortem report at Exh.17 in which all the injuries found on the body of Babubhai were noted and the cause of death was stated to be "massive internal abdominal bleeding due to stab wound in the (liver and intestine) abdominal viscera". The muddamal blood stained shirt, which was worn by the accused at the time of his arrest was seized under the Panchanama Exh.8 and forwarded to the Forensic Science Laboratory for analysis. As per the report Exh.28 it was found to be having human blood which on analysis was found to be of "A" Group, which was the Group of the blood of the deceased. The muddamal knife said to have been used by the accused in the crime was also sent for analysis and was found to be having stains of human blood, which were also of Group "A". Though even in absence of this circumstantial evidence, the evidence of the prosecution witnesses mentioned above is sufficient to establish the guilt of the accused beyond any shadow of doubt, these circumstances have a reassuring value. We, therefore, find ourselves in full agrement with the reasoning and findings of the trial court in holding that the accused had inflicted knife blows on Babubhai on 27.1.94 in the evening which had resulted in his death.

12. The question that now remains is as to whether the case of the accused falls in any of the Exceptions to Section 300 of the I.P.C. As noted above, there has been suggestion made in the cross-examination of Savita that Babubhai had given stick blows to the accused at the time of the incident. The widow of Babubhai has deposed that he was having a stick in his hand when he had gone to the house of the accused. From the arrest Panchanama Exh.8 it appears that two buttons of the shirt of the accused were missing, the shirt was torn near the pocket and on the back side also it was torn. The tear of the shirt was eleven inches long. This clearly indicates that

there was a fight which had ensued between the accused and Babubhai, who on hearing the shout of his sister Savita had rushed there with a stick. Babubhai had entered the house of Vinod because he was found lying in Vinod's house. Therefore, the possibility of a sudden fight having erupted cannot be ruled out. Babubhai had suddenly gone on hearing his sister's shout to the house of the accused with a stick and it appears that in a heat of passion a quarrel ensued, which has resulted in this unfortunate incident. The accused Vinod was in his own house and there was no premeditation in committing the offence, because, he would not be expecting Babubhai to suddenly enter his house with a stick. We are, therefore, fully satisfied that the case of the appellant falls within the ambit of Exception 4 of Section 300 of the I.P.C. As laid down in Explanation to Exception 4 it is immaterial in such cases which party offers the provocation or commits the first assault. We, would, therefore, uphold the conviction of the accused recorded for the offence under Section 304 Part I of the I.P.C. The sentence imposed on the accused is just and proper having regard to the facts and circumstances of the case and calls for no interference. There is, in our opinion, absolutely no ground for enhancing the conviction or the sentence.

13. The Appeal is, therefore, dismissed. Misc. Criminal Application No.124/97 stands rejected.

(R.K.Abichandani,J)

(D.K.Trivedi,J)